

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/30/10

IN RE WORLD TRADE CENTER DISASTER	:	ORDER DISMISSING CASES
SITE LITIGATION	:	WITH PREJUDICE FOR
	:	FAILURE TO PROSECUTE
IN RE LOWER MANHATTAN DISASTER	:	21 MC 100 (AKH)
SITE LITIGATION	:	21 MC 102
IN RE COMBINED WORLD TRADE CENTER	:	21 MC 103
AND LOWER MANHATTAN DISASTER SITE	:	
LITIGATION	:	
	x	
ALVIN K. HELLERSTEIN, U.S.D.J.:		

WHEREAS the Plaintiffs identified in the attached exhibit, having alleged suffering injuries arising from their participation in the cleanup of the World Trade Center and surrounding areas following the events of September 11, 2001, filed lawsuits against the City of New York and its contractors, conducted extensive discovery, filed numerous motions, and conducted pretrial and appellate proceedings; and

WHEREAS attorneys representing them entered into the Settlement Process Agreement, as Amended ("SPA"), on June 10, 2010, and obtained approval of the SPA by this Court as fair and reasonable on June 23, 2010; and

WHEREAS the SPA has provided a period for individual consideration by each Plaintiff, whether to accept or reject the settlement; and

WHEREAS, during this period, and after two informational hearings conducted by the Court and numerous diligent efforts by Plaintiffs' counsel to reach and advise each of the Plaintiffs, the Plaintiffs identified in the attached exhibit either could not be located, failed to respond to numerous communications directed to them, or refused to respond; and

WHEREAS this Court, by order of November 24, 2010, appointed Special Counsel to communicate with these Plaintiffs, supplementing previous efforts by counsel engaged by them; and

WHEREAS, despite best efforts extended by Special Counsel, the Plaintiffs identified in the attached exhibit could not be located, failed to respond to efforts by Special Counsel to communicate with them, or refused to respond; and

WHEREAS dismissal of a case for failure to prosecute is appropriate when (1) the client's inaction causes significant delay, (2) the client has received notice that further delay will result in dismissal, (3) the delay is likely prejudicial to the defendant, (4) the need to alleviate the Court's calendar congestion outweighs the right for an opportunity to have a day in court, and (5) lesser sanctions would not be efficacious, see Rusza v. Rubenstein & Sendy Attys at Law, 520 F.3d 176, 177 (2d Cir. 2008) (per curiam); and

WHEREAS these Plaintiffs (1) have caused significant delay in calculating the final opt-in thresholds under the SPA and in finalizing the Affirmation of Final Settlement under Section XXII of the SPA; (2) have received substantial notice that they would likely suffer dismissal for failure to respond; (3) may cause substantial prejudice to Defendants who seek to calculate the final settlement amount and obtain as broad a release from liability as possible; (4) have added to this Court's considerable calendar congestion at the expense of a right they do not appear seriously interested in vindicating; and (5) are unlikely to respond to lesser sanctions because they have failed to respond at all to this, the most serious sanction, despite the numerous attempts to obtain communications; therefore

IT IS ORDERED that pursuant to Federal Rule of Civil Procedure 41(b), this Court dismisses the cases listed in the attached exhibit with prejudice for all claims that were

brought or could have been brought in the individual Plaintiffs' existing pleadings, but without prejudice in relation to a second injury to the extent permitted by New York state law, see, e.g., Golod v. Hoffman La Roche, 964 F. Supp. 841 (S.D.N.Y. 1997) ("Under the two-injury rule [in New York], diseases that share a common cause may nonetheless be held separate and distinct where their biological manifestations are different and where the presence of one is not necessarily a predicate for the other's development.") (internal quotation omitted)), and as may be defined by any court having jurisdiction over any such later-filed complaint. The dismissals are without costs.

Any Plaintiff wishing to seek relief from this Order on the basis of conditions coming into effect if the James Zadroga 9/11 Health and Compensation Act of 2010, H.R. 847, 111th Congress (2010), becomes law, or for any other reason, may seek such relief by an appropriate motion within 30 days of this Order. See Fed. R. Civ. P. 60(b)(6).

The Clerk shall close the cases noted in the attached exhibit.

SO ORDERED.

Dated: December 30, 2010
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

1	Acierno	Albert
2	Adams	Robert
3	Allen	Ronnie
4	Alvarado	John
5	Alvarado	Robert
6	Alvarez	Jimmy
7	Asmal	Carlos
8	Atiencia	Marcelo
9	Audino	Joseph
10	Auerbach	Steven
11	Baran	Frank
12	Barberi-Franco	Nancy
13	Barksdale	Raymond
14	Barrett	Carland
15	Barry	William
16	Basil	John
17	Baumann	James
18	Bavelendiseh	John
19	Belmonte	Martin
20	Berardi	John
21	Bermeo	Norma
22	Bertosen	Kenneth
23	Biglin	Richard
24	Black	Marc
25	Blount	Anthony
26	Bonadio	Andrew
27	Bowers	Ronald
28	Braconi	Thomas
29	Brambach	Joseph
30	Brathwaite	Merlin
31	Braun	Hermann
32	Bremer	Charles
33	Brennan	William
34	Brooks	Milton
35	Brosnan	Patrick
36	Brown	Aaron
37	Brown	Robert
38	Butrico	George
39	Callahan	Thomas
40	Cantwell	Paul
41	Carroll	Brian
42	Carter	Aaron
43	Carter	Yannique
44	Caruso	Andrew
45	Castellanos	Ludivia
46	Charlot	Jean
47	Cherenfant	Henry
48	Cheung	Eric

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

49	Chuva	Nancy
50	Clark	George
51	Clarke	Tyrone
52	Cleary	Thomas
53	Cofield	Morris
54	Colasanti	Christopher
55	Colavitti	Kevin
56	Colvin	Thomas
57	Contreras	Claudio
58	Conversano	Christopher
59	Cook	Sean
60	Corral	Leiza
61	Cox	James
62	Cripps	William
63	Cronin	William
64	Currie	Bennie
65	Cuzzo	John
66	D Orio	Paul
67	D'Alessandro	Frank
68	Dalton	James
69	Dannenfelser	Gene
70	Dasilva	Aldonio
71	Davis	Hobart
72	Davis	Michael
73	Dealmeida	Michael
74	DeFano	John
75	DeGuardia	Don
76	Deluca	John
77	Deluca	Nicholas
78	DeMatteo	Charles
79	DeSalvo	Jack
80	DeVico	Anthony
81	Diaz	Diego
82	Diaz	Freddy
83	DiBlasi	Louis
84	DiCarlo	Anthony
85	Dinatale	Luciano
86	DiPrimo	Donato
87	Dobbins	Anthony
88	Doherty	James
89	Donovan	Derek
90	Donovan	Michael
91	Dosmas	Lugner
92	Dow	Frederick
93	Drew	Daniel
94	Dubelbeiss	Gene
95	Duff	Christopher
96	Dundon	Leonard

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

97	Eadicicco	Vincent
98	Echeverri	Raul
99	Eglentowicz, Jr.	Gerald
100	Ellis	Delroy
101	Espinoza	Jorge
102	Estevez	Jesus
103	Fallar	James
104	Fallon	Patrick
105	Farley	Dennis
106	Faro	Joseph
107	Feeley	Thomas
108	Feici	Thomas
109	Ferchland	James
110	Fernandez	Rudy
111	Finocchiaro	Mark
112	Flim	Philip
113	Flinn	Richard
114	Flores	Nicholas
115	Fonseca	Joseph
116	Forgione	Richard
117	Freeman	Christopher
118	Fucci	Preston
119	Fusco	Kenneth
120	Gadry	Stephen
121	Galvin	Thomas
122	Garabedian	Peter
123	Garofalo	Edward
124	Garon	John
125	Garrone	John
126	Geiger	Rudolph
127	Geraghty	Mark
128	Giardino	Melanie
129	Gibbons	Michael
130	Gibbons	Sean
131	Gibson	Thomas
132	Gigantino	Leonard
133	Gilford	Samuel
134	Gill	Maureen
135	Gillespie	James
136	Giovanetti	John
137	Gnerre	Anthony
138	Goldstein	Avraham
139	Gomez	Edwin
140	Gonce	Charles
141	Gonzalez	Angel
142	Grazette	Michael
143	Griffin	Anitress
144	Guercio	Jimmie

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

145	Guevara	Benigno
146	Gunther	Glenn
147	Gutierrez	William
148	Guzman	Juan
149	Hall	Thaddeus
150	Hall	Wayne
151	Hanley	Raymond
152	Hanley	Robert
153	Harrington	Joseph
154	Harris	Gregory
155	Haynes	Anthony
156	Hearty	Patrick
157	Hill Jr	David
158	Hogue	Gwendolyn
159	Holder	Daniel
160	Horan	Joe
161	Hovington	Dwight
162	Howard	Gregory
163	Humphreys	Michael
164	Hyde	Richard
165	Isaac	Derek J
166	Jackson	Daniel
167	Janketic	Walter
168	Janowski	Dean
169	Johnson	Tomar
170	Jones	Randy
171	Jonny	Eugene
172	Joseph	Bella
173	Kappock	Daniel
174	Kearns	John
175	Kelliher	Scott
176	Kellyman	Leaford
177	Klapal	Joy
178	Kornegay - Pichardo	Kenyetta
179	Kuczinski	John
180	Kurz	Roy
181	Lago-Cambeiro	Leonardo
182	Lambiasi	Robert
183	Lavin	Paul
184	Lediger	Lawrence
185	Lee	Ricky
186	Lemire	John
187	Lentini	Ernest
188	Lewis	Henry
189	Leyva	Juan
190	Libretto	Frank
191	Limerick	Winston
192	Linehan	Dennis

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

193	Locke	Martin
194	Logan	Lawrence
195	Lolatte	Robert
196	Lopez	Wifredo
197	Lugo	Hector
198	Lynch	Michael
199	Maginnis	Joseph
200	Maira	Lewis
201	Mallien	Conrad
202	Mannix	Paul
203	Margulies	Gilbert
204	Martin	Darryl
205	Martinez	Luis
206	Martinez	Robin
207	Mathus	Christopher
208	Mattheis	Christopher
209	Matthew	Charles
210	Matthews	Denise
211	Matula	Robert
212	Mauceri	Mark
213	McAllister	Ilene
214	McCafferty	James
215	McCain	Karl
216	McCarney	Joseph
217	McCarthy	James
218	McCarton	James
219	McGloin	John Sean
220	McGovern	Michael
221	McMillan	Eric
222	McNair	Ronald
223	McPartland	Thomas
224	Medina	Jose
225	Mendoza	Marco
226	Mesa	Ian
227	Metanovic	Fadila
228	Miller	Richard
229	Millman	Lester
230	Mitchell	Solomon
231	Moir	John
232	Molinaro	James
233	Moncada	Vincent
234	Monitello	Patrick
235	Monsolino	John
236	Moore	William
237	Mora	Eric
238	Morales	Arturo
239	Morales	Wanda
240	Morin	Milka

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

241	Morrissey	James
242	Moscol	Jose
243	Moynihan	Daniel
244	Mullane	Kevin
245	Muller	Brian
246	Muniz	Hector
247	Murphy	Stephen
248	Murray	Arthur
249	Nelson	Jenny-Ann
250	Netrosio	Mimi
251	Nielsen	Kevin
252	Oakley	Ricardo
253	O'Boile	Brian
254	OConnor	Kenneth
255	O'Connor	Patrick
256	Olivieri	Bob
257	Olsen	Martin
258	Orbe	Elva
259	O'Reilly	James
260	Ortiz	Raymond
261	Otero	Tarek
262	Palleschi	Michael
263	Pasqua	Paul
264	Pasquarello	Nicholas
265	Paulino	Miguel
266	Pawelski	Peter
267	Pedersen	Edward
268	Perez	David
269	Perez	Samuel
270	Perodin	Paul
271	Pershad	Ramchand
272	Persico	Robert
273	Peterson	Curtis
274	Pizzichiello	James
275	Prager	Richard
276	Ptacek	James
277	Pumilla	Stephen
278	Pushkal	Thomas
279	Pyke	Brian
280	Quevedo	Fabiola
281	Quinn	Michael
282	Ragumar	Vamadevan
283	Ramirez	Thomas
284	Randazzo	Michael
285	Reddington	Michael
286	Regans	Alicia
287	Reilly	Frank
288	Reiman	Malcolm

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

289	Reinoso	Bolivar
290	Revander	Margaret
291	Rhoden	Marcel
292	Ricciotti	Christopher
293	Rivera	Eliseo
294	Rivera	Enrique
295	Rivera	Gilbert
296	Robinson	Herman
297	Robinson	Michael
298	Robson	Joseph
299	Rocano	Angel
300	Rodriguez	Dennis
301	Rodriguez	Kenneth
302	Rodriguez	Rosemary
303	Rojecki	Thomas
304	Roman	Jose
305	Rosado	Joel
306	Rosario	Joseph
307	Rosario	Wilfredo
308	Rosati	John
309	Ross	Brian
310	Roy	Kevin
311	Rubio	Miriam
312	Russolello	Dominick
313	Sanchez	Fernando
314	Sanchez	Jose
315	Santana	Jose
316	Saporito	Vincent
317	Scanlon	Michael
318	Schaefer	Edward
319	Schnugg	Michael
320	Scopelliti	Carmine
321	Sepulveda	Robert
322	Serrano	Angel
323	Sferrazza	Salvatore
324	Sham	Michael
325	Sheehan	Angelina
326	Sheppard	Albert
327	Sheridan	Farjie
328	Skelton	Gerald
329	Slater	Justin
330	Small	Lenworth
331	Smalls	Raymond
332	Smith	Godfrey
333	Smith	Russell
334	Smith	Thomas
335	Smith	William
336	Sneddon	Grant

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

337	Southerland	Ronald
338	Spatz	Joseph
339	Specce	Gerard
340	St. Rose	Rogello
341	Stanisich	Peter
342	Stein	Ronald
343	Steward	Duane
344	Strickland	William
345	Suarez	Felipe
346	Sullivan	Dennis
347	Susi	Anthony
348	Swarm	Edward
349	Syku	Ardian
350	Szczepanski	Krzysztof
351	Talavera	Giovanni
352	Tarmey	Glen
353	Tartamella	Peter
354	Techky	Susan
355	Tello	Sonia
356	Tesieriro	Vincent
357	Tessoni	Robert
358	Than	Porsche
359	Tighe	James
360	Tobie	Leonard
361	Tompkins	Kevin
362	Torres	Rubin
363	Torres	Wilfredo
364	Trazino	Louis
365	Trinidad	Fernando
366	Trivino	Guido
367	Tully	George
368	Twist	Thomas
369	Umpierre	Ramon
370	Urbina	Ervin
371	Urquhart	Milton
372	Vaidian	Jacob
373	Valdiviezo	Hector
374	Valerio	William
375	Valla	Edward
376	VanHyning	Craig
377	Varrone	Patti
378	Vasquez	Antonio
379	Vasquez	Joseph
380	Vasquez	Nelson
381	Vaughan	Michael
382	Vaughn	Anthony
383	Vazquez	Carlos
384	Vega	Janette

WTC Special Counsel Project
Eligible Plaintiffs with No Response as of 12/29/2010

385	Velez	Ernest
386	Velez	Hector
387	Vercelli	Thomas
388	Vetrone	Brian
389	Vezzola	Stephen
390	Vigorito	John
391	Villalona	Wando
392	Villanueva	Jose
393	Vitale	James
394	Vonsee	Robert
395	Voss	Michael
396	Walcott	John
397	Walsh	John
398	Waterman	Dawnette
399	Werner	Henry
400	Wiese	Michael
401	Williams	Frederick
402	Willis	Jerome
403	Wilson	George
404	Wnek	Joseph
405	Wu	Ai Fang
406	Zajac	Robert
407	Zapata	Alejandro
408	Zarnowski	John
409	Zipp	Arthur